

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TIMOTHY O'CONNELL,

Plaintiff,

v.

ORDER
03-CV-880A

STATE FARM FIRE AND CASUALTY
COMPANY, a/k/a STATE FARM
GENERAL INSURANCE COMPANY,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1), on December 19, 2003. On March 26, 2004, plaintiff Timothy O'Connell filed a motion for summary judgment. Defendant State Farm Fire and Casualty Company ("State Farm") filed a cross motion for partial summary judgment on April 21, 2004. On July 1, 2005, Magistrate Judge H. Kenneth Schroeder, Jr. filed a Report and Recommendation, recommending that plaintiff's motion for summary judgment declaring that State Farm is obligated to provide a defense under a personal umbrella liability policy with respect to a claim for assault asserted against plaintiff in his personal capacity in Sickau v. Timorhy O'Connell, et

al., 03-CV-364 be granted and that State Farm's cross motion for summary judgment dismissing any claim for compensatory or punitive damages based upon bad faith by State Farm be granted.

Defendant filed objections to the Report and Recommendation on July 12, 2005. Oral argument on the objections was held on August 30, 2005.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge H. Kenneth Schroeder, Jr.'s Report and Recommendation, plaintiff's motion for summary judgment declaring that State Farm is obligated to provide a defense under a personal umbrella liability policy with respect to a claim for assault asserted against plaintiff in his personal capacity in Sickau v. Timorhy O'Connell, et al., 03-CV-364 is granted and defendant State Farm's cross

motion for summary judgment dismissing any claim for compensatory or punitive damages based upon bad faith by State Farm is granted.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT JUDGE

Dated: August 31 , 2005